

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

v.

FRITZ MURRAY,

Defendant.

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ORDER

09-cr-73-bbc

Defendant Fritz Murray has filed objections to the report and recommendation of the United States Magistrate Judge entered on September 22, 2009. As he did before the magistrate judge, he argues that he cannot be found guilty of violating 18 U.S.C. § 922(g)(9) when he had no reason to believe that he was subject to it. For the reasons the magistrate judge set out in his report, this argument is of no help to defendant. The law is clear: a person who has been convicted of a misdemeanor crime of domestic violence may not possess a gun, whether or not the person is aware of the prohibition.

Whether the law is a wise exercise of legislative power, whether it has been publicized adequately and if not, whether it is fair to enforce it are all legitimate questions, see, e.g., United States v. Wilson, 159 F.3d 280, 293-95 (7th Cir. 1998) (Posner, J., dissenting;

discussing these questions), but they are not ones that can be raised as a defense in this court. In Wilson, the Court of Appeals for the Seventh Circuit held definitively that § 922(g)(9) is a valid exercise of Congress's power under the commerce clause and does not violate either the Tenth Amendment or the due process clause. Id. at 289. (Although Wilson was prosecuted under subsection (8) of § 922(g), he raised the same due process arguments that defendant is raising in this case: a person cannot be found guilty of violating a statute he never knew existed and cannot violate the statute "knowingly" if he never knew of it.) Accordingly, I will adopt the United State Magistrate Judge's recommendation to deny defendant's motion in limine to require the government to prove that he knew it was unlawful for him to possess a firearm and grant the government's opposing motion in limine.

#### ORDER

IT IS ORDERED that the recommendation of the United States Magistrate Judge is ADOPTED. FURTHER, IT IS ORDERED that defendant Fritz Murray's motion in limine is DENIED and the government's motion in limine is GRANTED. It is not necessary for the government to prove that defendant knew that he was violating the law when he possessed

a firearm after he had been convicted of a misdemeanor crime of domestic violence.

Entered this 29<sup>th</sup> day of September, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB  
District Judge